

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN SENATE JUNE 5, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3079**

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**Introduced by Committee on Revenue and Taxation (Charles  
Calderon (Chair), Arambula, Eng, Hayashi, and Ma)**

March 13, 2008

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An act to add Section 64.5 to the Labor Code, and to amend Sections 7342, 7470, and 60135 of, to amend the heading of Article 3 (commencing with Section 7470) of Chapter 4 of Part 2 of Division 2 of, to add Sections 6487.06, 7652.8, and 60204.6 to, and to repeal Section 7076.5 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 3079, as amended, Committee on Revenue and Taxation.  
Taxation: State Board of Equalization: administration.

(1) The State Board of Equalization is authorized to enter into agreements for the reciprocal exchange of information or for release of information, including personal or confidential information, with state agencies, including providing information to the Department of Industrial Relations regarding the sales and use tax and use fuel tax programs.

This bill would authorize the Department of Industrial Relations to ~~share with~~ *transmit to* the State Board of Equalization, *specified* information in its records ~~that will~~ *to* assist the State Board of Equalization in determining compliance with the Sales and Use Tax Law, *as provided*.

(2) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law provides for an 8-year statute of limitations for the collection of use taxes that are not reported under that law. Existing law provides for a 3-year statute of limitations in the case of an unregistered out-of-state retailer that voluntarily registers with the State Board of Equalization, if a determination is made that the failure to report and pay the tax was due to reasonable cause.

Prior to December 31, 2007, the statute of limitations for the collection of unreported use taxes on specified purchases by a qualified purchaser was 3 years if a determination was made that the failure to report and pay the tax was due to reasonable cause. That law also allowed the qualified purchaser to file a statement under penalty of perjury, requesting relief from penalties.

This bill would reinstate the 3 year statute of limitations for reasonable cause, including allowing a taxpayer to file a statement, under penalty of perjury, requesting relief from penalties imposed.

(3) The Sales and Use Tax Law, until January 1, 2009, provides for a managed audit program and allows a taxpayer to participate in the program if that taxpayer meets certain criteria.

This bill would repeal the termination date of the managed audit program, thereby extending the managed audit program indefinitely.

(4) The Diesel Fuel Tax Law and the Motor Vehicle Fuel Tax Law generally impose a tax at specified rates, when fuel is removed from a refinery or terminal or imported into this state. Pipeline and vessel operators are required to obtain a license from the State Board of Equalization and to file reports with the board regarding motor vehicle fuel and diesel fuel carried by their vessels and pipelines. Train operators are required to obtain a license or permit from the State Board of Equalization for the purpose of reporting the fuel purchased under an exemption certificate for use in their trains.

This bill would require train operators that carry motor vehicle fuel, alcohol, aircraft jet fuel, and diesel fuel to obtain a license from the State Board of Equalization and to file reports with the board regarding those fuels carried by their trains.

(5) This bill, by allowing a taxpayer to file a request for relief under penalty of perjury, would create a new crime and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 64.5 is added to the Labor Code, to read:  
2     64.5. When requested by the State Board of Equalization, the  
3     department may permit any duly authorized representative of that  
4     agency to ~~obtain~~ *transmit to the State Board of Equalization*  
5     information available in the department's records that ~~will~~ *indicates*  
6     *a retail establishment is operating without a seller's permit*  
7     *required by the State Board of Equalization, to assist the State*  
8     Board of Equalization in determining compliance with the Sales  
9     and Use Tax Law (Part 1 (commencing with Section 6001) of  
10    Division 2 of the Revenue and Taxation Code).

11    SEC. 2. Section 6487.06 is added to the Revenue and Taxation  
12    Code, to read:

13    6487.06. (a) Notwithstanding Section 6487, the period during  
14    which a deficiency determination may be mailed to a qualifying  
15    purchaser is limited to three years after the last day of the calendar  
16    month following the quarterly period for which the amount is  
17    proposed to be determined.

18    (b) For purposes of this section, a "qualifying purchaser" is a  
19    person that voluntarily files an individual use tax return for tangible  
20    personal property that is purchased from a retailer outside of this  
21    state for storage, use, or other consumption in this state, and that  
22    meets all of the following conditions:

23    (1) The purchaser resides or is located within this state and has  
24    not previously done any of the following:

25    (A) Registered with the State Board of Equalization.

26    (B) Filed an individual use tax return with the State Board of  
27    Equalization.

28    (C) Reported an amount on his or her individual California  
29    income tax return.

1 (2) The purchaser is not engaged in business in this state as a  
2 retailer, as defined in Section 6015.

3 (3) The purchaser has not been contacted by the State Board of  
4 Equalization regarding failure to report the use tax imposed by  
5 Section 6202.

6 (4) The State Board of Equalization has made a determination  
7 that the purchaser's failure to file an individual use tax return or  
8 to otherwise report or pay the use tax imposed by Section 6202  
9 was due to reasonable cause and was not caused by reason of  
10 negligence, intentional disregard of the law, or by an intent to  
11 evade the taxes imposed by this part.

12 (c) If the State Board of Equalization makes a determination  
13 that the purchaser's failure to timely report or remit the taxes  
14 imposed by this part is due to reasonable cause or due to  
15 circumstances beyond the purchaser's control, the purchaser may  
16 be relieved of any penalties imposed by this part. Any purchaser  
17 seeking relief from penalties imposed by this part shall file a  
18 statement, signed under penalty of perjury, setting forth the facts  
19 that form the basis for the claim for relief.

20 (d) This section shall not apply to purchases of vehicles, vessels,  
21 or aircraft as defined in Article 1 (commencing with Section 6271)  
22 of Chapter 3.5.

23 SEC. 3. Section 7076.5 of the Revenue and Taxation Code is  
24 repealed.

25 SEC. 4. Section 7342 of the Revenue and Taxation Code is  
26 amended to read:

27 7342. "Train operator" includes any person that owns, operates,  
28 or controls a train and is licensed as a railroad by a state or federal  
29 agency.

30 SEC. 5. The heading of Article 3 (commencing with Section  
31 7470) of Chapter 4 of Part 2 of Division 2 of the Revenue and  
32 Taxation Code is amended to read:

33  
34 Article 3. License for Pipeline Operator, Train Operator, and  
35 Vessel Operator  
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37 SEC. 6. Section 7470 of the Revenue and Taxation Code is  
38 amended to read:

39 7470. Every person before becoming a pipeline operator or a  
40 vessel operator shall apply to the board for a license on forms

prescribed by the board. In addition, every train operator that transports motor vehicle fuel, alcohol, or aircraft jet fuel into, out of, or within this state shall obtain a license from the board on forms prescribed by the board. A pipeline operator license, a train operator license, or a vessel operator license shall be issued only to a person who is a pipeline operator, a train operator, or a vessel operator as defined in Sections 7331, 7342, and 7344. It is unlawful for a person to act as a pipeline operator or a vessel operator without first securing a license. It is unlawful for a train operator to transport motor vehicle fuel, alcohol, or aircraft jet fuel into, out of, or within this state on or after January 1, 2009, without first securing a license under this section or Section 7403.1.

SEC. 7. Section 7652.8 is added to the Revenue and Taxation Code, to read:

7652.8. Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(a) The amount of motor vehicle fuel, alcohol, and aircraft jet fuel delivered into, out of, or within this state.

(b) The location where the motor vehicle fuel, alcohol, or aircraft jet fuel was delivered.

(c) The date of delivery.

(d) Any other information required by the board for the proper administration of this part. The train operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 8. Section 60135 of the Revenue and Taxation Code is amended to read:

60135. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. In addition, every train operator that transports diesel fuel into, out of, or within this state shall obtain a license from the board on forms prescribed by the board. A train operator license, pipeline operator license, or a vessel operator license shall be issued only to a person who is a train operator,

1 pipeline operator, or a vessel operator as defined in Sections 60041,  
2 60047.1, and 60049.1. It is unlawful for a person to act as a pipeline  
3 operator or a vessel operator without first securing a license. It is  
4 unlawful for a train operator to transport diesel fuel into, out of,  
5 or within this state on or after January 1, 2009, without first  
6 securing a license under this section or a permit under Section  
7 60106.1.

8 SEC. 9. Section 60204.6 is added to the Revenue and Taxation  
9 Code, to read:

10 60204.6. Each train operator shall prepare and file with the  
11 board a report in the form as prescribed by the board, which may  
12 include, but not be limited to, electronic media showing, for the  
13 calendar month, or that monthly period ended during the calendar  
14 month as the board may authorize, all of the following:

15 (a) The amount of diesel fuel delivered into, out of, or within  
16 this state.

17 (b) The location where the diesel fuel was delivered.

18 (c) The date of delivery.

19 (d) Any other information required by the board for the proper  
20 administration of this part. The train operator shall file the report  
21 on or before the last day of the month following the monthly period  
22 to which it relates. To facilitate the administration of this part, the  
23 board may require the filing of the reports for other than monthly  
24 periods. Reports shall be authenticated in a form or pursuant to  
25 methods as may be prescribed by the board.

26 SEC. 10. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.